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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1945.

No. 385

WILLIAM JEFFRIES, JR., CHARLES R. AIKEN, administrator  
*de bonis non* of the estate of William Jeffries, deceased,  
DRAPER AND KRAMER, INCORPORATED, a corporation, and  
CHICAGO TITLE AND TRUST COMPANY, a corporation, as  
Trustee, etc.,

*Petitioners,*

VS.

NELLIE JEFFRIES and HARPER FRENCH,

*Respondents.*

**PETITION FOR WRIT OF CERTIORARI TO THE  
CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

CHARLES RIVERS AIKEN,  
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*Counsel for Petitioners.*



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**PETITION FOR WRIT OF CERTIORARI.**  
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*May It Please The Court:*

Your petitioners respectfully represent as follows:

## I.

**Matter Involved.**

Respondent Harper French, a citizen of Michigan, filed his complaint in the District Court for Northern Illinois against respondent Nellie Jeffries and the petitioners, all citizens of Illinois, seeking to establish a half interest in a deceased's property stated to have a value of \$100,000 (Tr. 2-12). The widow filed a countercomplaint claiming sole ownership under trusts of the decedent's estate (Tr. 19-50).

At the trial the plaintiff admitted under cross examination that his claims were fabricated and were made in an attempt by him to defraud the estate (Tr. 184).

The chancellor dismissed the complaint and the countercomplaint for want of equity (Tr. 113-126).

The widow appealed contending the plaintiff's admission that his claims were meritless ousted the court of jurisdiction and that her countercomplaint should, therefore, have been dismissed for want of jurisdiction instead of for want of equity (Tr. 146-147). The administrator moved to dismiss the appeal as moot (Tr. 268).

The court of appeals ignored the motion to dismiss the appeal and ordered the cause dismissed for want of jurisdiction, holding (Tr. 233):

"Where the claim asserted by the plaintiff has no existence in point of fact and is fraudulently asserted in a complaint, such a claim is incapable of supporting the jurisdiction of the court."

**II.****Jurisdictional Basis.****A.**

Issuance of the writ of certiorari upon this record is authorized by section 240 of the Judicial Code (28 U. S. C., sec 347a).

The judgment sought to have reviewed was rendered by the Circuit Court of Appeals for the Seventh Circuit upon appeal from the District Court of Northern Illinois. Section 240 of the Judicial Code provides in pertinent respects: "In any case, civil or criminal, in a circuit court of appeals, . . . it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, . . . to require by certiorari . . . that the cause be certified to the Supreme Court for determination by it . . ."

**B.**

The judgment presented for review was rendered by the court of appeals on May 7, 1945 (Tr. 235). The reviewing court below denied a timely petition for rehearing on June 14, 1945 (Tr. 275). This petition with supporting brief and record having been filed with the clerk within three months after June 14, 1945, the application is made in time. (*National Labor Relations Board v. Mackay Radio Co.*, 304 U. S. 333.)

**III.****Questions Presented.****A.**

When a false demand is asserted solely for the claimant's gain and without any purpose of creating a case within the federal jurisdiction, does ascertainment of the lack of merit in the complaint oust the federal jurisdiction and require the court to dismiss the cause for want of jurisdiction instead of on the merits? Or, in other words, where a claim is unfounded and a fraud upon the parties sued, does that fact, alone, in the absence of collusion or conspiracy to frame a case cognizable in the federal court, preclude the court from denying the fictitious demand?

**B.**

Does the Judicial Code require the trial court to peremptorily dismiss a complaint for want of jurisdiction as soon as there is any indication that the claim was concocted for invocation of the federal jurisdiction, or is it necessary for the proper exercise of the court's discretion to await such time as the facts create a legal certainty that the suit does not fairly involve a controversy within its jurisdiction?

**C.**

Is a party who has affirmatively invoked the jurisdiction of a federal court by filing a counterclaim estopped from challenging that jurisdiction solely in order to avoid an unfavorable ruling?



**D.**

May a court of appeals set aside a judgment not appealed from and, therefore, not before it, because the record presented upon an appeal from a different judgment contains all of the proceedings on which the unappealed judgment is based?

**E.**

May a reviewing court in the face of a motion to dismiss the appeal as moot upon a record which presents no actual controversy involving real and substantial rights between the parties pass upon a question of the trial court's jurisdiction?

**F.**

May a Circuit Court of Appeals in reviewing a case coming from the District Court finally determine and dispose of the cause in the upper court, or must the cause be remanded to the trial court for further proceedings?

**G.**

Can a court of appeals discharge its appellate function on the review of a decree in chancery by rewarding her whom it has found guilty of fraud?

**IV.****Reasons for Allowing the Writ.**

The following special and important reasons for exercise of the Court's discretionary consideration are presented upon this record:

**A.**

**The court of appeals decided a federal question in a way that conflicts with an applicable decision of this court.**

The reviewing court below ordered the cause dismissed for want of jurisdiction because the plaintiff's claim was found to be fictitious but not asserted to create federal jurisdiction. The court concluded:

"Where the claim asserted by the plaintiff has no existence in point of fact and is fraudulently asserted in a complaint, such a claim is incapable of supporting the jurisdiction of the court."

This Court has held that to warrant dismissal for want of jurisdiction under section 37 of the Judicial Code the claim must not only be without merit but in addition must have been asserted for the purpose of conferring jurisdiction on the federal court. In *St. Paul Indemnity Co. v. Cab Co.*, 303 U. S. 283, the following test was laid down (p. 289):

"If, from the face of the pleadings it is apparent to a legal certainty that the plaintiff cannot recover the amount claimed, or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount, and that his claim was therefore colorable *for the purpose of conferring jurisdiction, the suit will be dismissed.*" (Italics supplied.)

**B.**

**The court of appeals decided a federal question in a way that conflicts with applicable decisions of this Court.**

The reviewing court below held that the moment it appeared to the Master or the District Court that the claim was faked the cause should have been allowed to proceed

no farther and ought to have been summarily dismissed for want of jurisdiction. The Court said:

“When the Master and the District Court saw that it was a fake suit, it was the Master’s duty to recommend dismissal, and the Court’s duty to dismiss the case.”

In *Wetmore v. Rymer*, 169 U. S. 115, this Court held (p. 128):

“A suit cannot be properly dismissed by a circuit court as not substantially involving a controversy within its jurisdiction unless the facts when made to appear on the record *create a legal certainty of that conclusion.*”

To the same effect see: *Put-in-Bay Waterworks Co. v. Ryan*, 181 U. S. 409, 430; *Smithers v. Smith*, 204 U. S. 632, 644, 646; *Barry v. Edmunds*, 166 U. S. 550, 559.

### C.

**The ruling of the court of appeals is in conflict with the decision of another circuit on the same matter.**

In its opinion the court below stated:

“Nellie Jeffries answered the complaint, admitting that French was a citizen of Michigan, and she filed a countercomplaint in which she alleged she was the owner of the property of which deceased died siezed . . . At the conclusion of the first testimony taken, which was that of the plaintiff Harper French, counsel for Nellie Jeffries, . . . insisted on dismissal of the complaint for want of jurisdiction . . . Nellie Jeffries appealed . . . The question of jurisdiction was raised at the trial, in the briefs, and on the oral argument.”

It was urged by the appellees in the court of appeals that Nellie Jeffries by affirmatively invoking the jurisdic-

tion of the District Court was estopped from contesting that jurisdiction. This contention was totally ignored. Instead, the reviewing court merely observed, although all parties had conceded the elementary proposition:

“It hardly needs the citation of authority to support the proposition that the parties cannot stipulate to waive jurisdiction or by their consent can confer jurisdiction.”

The Second Circuit Court of Appeals in *O. J. Lewis Mercantile Co. v. Klepner*, 176 Fed. 343, held as follows upon precisely the same question (p. 346):

“The defendant interposed a counterclaim, and having invoked the jurisdiction of the court for its own benefit is now estopped from denying it.”

This Court denied certiorari in the *Klepner case* (216 U. S. 620), and cited the decision with approval in *St. Paul Indemnity Co. v. Cab Co.*, 303 U. S. 283.

#### D.

**The ruling of the court of appeals is in conflict with the decisions of other circuits on the same matter.**

The reviewing court below found in its opinion:

“The District Court considered the case on its merits and found against French on his complaint and Nellie Jeffries on her countercomplaint. Nellie Jeffries appealed.”

The decree dismissing the plaintiff's complaint for want of equity was not appealed and was not before the court of appeals for determination. Yet, the reviewing court ordered such judgment dismissed for want of jurisdiction instead of for want of equity.

The Circuit Court of Appeals held in *Bass v. B. & O. Term. R. Co.*, 142 F. 2d 779, 781:

"We cannot review an order from which no appeal has in fact been taken."

To like effect see *Brady v. Bernard & Kittinger*, 170 Fed. 576, 581; *Greif v. Mullinix*, 264 Fed. 391, 394.

### E.

**The court of appeals decided a federal question in a way that conflicts with an applicable decision of this Court.**

Appellees in the court below pointed out there that each claim asserted by the appellant had been adversely decided in the State courts and that the appeal involved no real or substantial rights. A motion was made to dismiss the appeal as moot.

The court of appeals ignored the motion to dismiss, thus in effect denying it.

This Court held in *Mills v. Green*, 159 U. S. 651, 653:

"The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it."

### F.

**The court of appeals decided a federal question in a way that conflicts with applicable decisions of this Court.**

The court below disposed of the appeal in the following manner:

"The suit did not ' . . . really and substantially involve a dispute or controversy properly within the jur-

isdiction of said district court . . . ' as required by statute. 28 U. S. C. A. 80 . . . It is our duty where the District Court so fails to dismiss for want of jurisdiction and proceeds to dismiss on the merits, to dismiss the case . . . The case is dismissed for want of jurisdiction."

In *Piedmont & Nor. Ry. v. United States*, 280 U. S. 469, this Court ruled (p. 478):

"Since plaintiff's bill was dismissed on the merits when it should have been dismissed for want of jurisdiction, the decree must be reversed with directions to dismiss the bill for want of jurisdiction."

#### G.

**The ruling of the court of appeals is in conflict with the decisions of another circuit on the same matter.**

The court below found that Nellie Jeffries, the appellant there, "conspired with Bruseaux to get French to file this fake suit . . . She is a part of the fraud."

The only practical effect of the decision below is to permit Nellie Jeffries to escape the bar of the decree denying her various claims of ownership and permit her to refile her suit in another court. Thus, the only party benefited by the decision on appeal is she whom the reviewing court found guilty of fraud.

The Second Circuit Court of Appeals held in *O. J. Lewis Mercantile Co. v. Klepner*, 176 Fed. 343, 344:

"No serious contention based upon the merits can be urged . . . This fact coupled with the additional fact that the litigation has already extended over a period of more than six years involving three trials and two appeals, predisposes the court not to dismiss the cause upon a doubtful question of jurisdiction."

**Prayer.**

Wherefore, the petitioners pray that a review of the decision by the circuit court of appeals in this cause may be granted and the writ of certiorari ordered to issue for that purpose.

Respectfully submitted,

CHARLES RIVERS AIKEN,  
*Counsel for Petitioners.*